IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. 539-DB of 1997
DATE OF DECISION: 31.1.2007
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Manjit Singh

..APPELLANT

VS.

State of Punjab

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- Mr. Baldev Singh, Sr. Advocate with
Mr. Ravi Satija, Advocate
for the appellant.

Mr. J.S. Dhillon, DAG Punjab
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ARVIND KUMAR, J.

Appellant Manjit Singh has been convicted under Section 302 read with Section 34 IPC for committing the murder of Jagir Singh whereas his co-accused Bachan Singh has been acquitted by the trial court. The appellant has been sentenced to undergo life imprisonment with a fine of Rs.2000/- and in default thereof to undergo rigorous imprisonment for further three months. The trial court further held him guilty of committing an offence under Section 27 of Arms Act and sentenced him to undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/-. In default of payment of fine, further imprisonment for one and a half month has been awarded. Both the sentences are ordered to run concurrently. This has necessitated the appellant to file the instant appeal questioning the legality of the judgment and order of his conviction dated 12.5.1997 passed by the trial court.

The genesis of prosecution case is in statement (Ex.PF) made by informant Gurdial Singh (PW.2) before SI Gurdip Singh (PW.8) on

19.6.1994 to the effect that in the night he, his mother Durgo and other family members were sleeping in the house, whereas his father Jagir Singh was sleeping at some distance, on a cot in the courtyard. At about 12.30 a.m. in the night on hearing the noise of a fire shot, all of them woke up and rushed towards inside. In the light of bulb, they saw Manjit Singh standing near the cot of his father, armed with a rifle. As soon as his father Jagir Singh stood up, Manjit Singh fired thrice upon him from his rifle, as a result of which his father fell down on the ground. Manjit Singh also fired a shot upon him (informant) but the same did not hit him. In the meantime two more unidentified persons came there and they dragged Jagir Singh to some distance and threw him in the corner of sugar-cane fields and fled away towards Sutlej river. Due to fear they remained inside and came outside after half an hour and found Jagir Singh dead. According to informant, the occurrence took place as about four years back, a raid was conducted by the police when Manjit Singh etc., were distilling illicit liquor and they have suspicion that it was on account of information furnished by Jagir Singh to the police. On the basis of said statement, formal FIR (Ex.PD) was registered. SI Gurdip Singh reached at the place of occurrence and inspected the spot. He prepared inquest report (Ex.PE) of the dead body of Jagir Singh, which was identified by Tehal Singh and Prem Singh. Six empties of 303 bore (Ex.P78 to Ex.P83) and 5 empties of 12 bore (Ex.P84 to Ex.P88), recovered from the spot, were also taken taken into police possession vide separate recovery memos Ex.PT and Ex.PU respectively. He also lifted blood stained earth (Ex.P75) and one mattress (Ex.P76) and took them into possession vide recovery memos Ex.PV and Ex.PW respectively. He also prepared site plan (Ex.PX) and despatched the dead body to Civil Hospital, Sultanpur Lodhi where post-mortem examination was done by Dr. Narinder Singh (PW.1) vide PMR Ex.PA. During the examination, he found as many as eight injuries on the dead body and in his opinion the case of death was shock and haemorrhage due to fire-arm injuries, which were ante-mortem in nature and sufficient to cause death in ordinary course of nature.

Thereafter on 18.7.1994 the investigations of this case were entrusted to ASI Harjinder Singh (PW.7). During investigations,ASI Harjinder Singh arrested the accused-appellant Manjit Singh and he suffered

disclosure statement (Ex.PK) dated 22.7.1994 and pursuant thereto got recovered one 303 bore rifle and 75 live cartridges of the same bore, wrapped in a jute bag, from the fields situated near his tube-well and the same were taken into possession vide recovery memo Ex.PM.

Subsequently on 26.7.1994 Bachan Singh (since acquitted by the trial court) also suffered a disclosure statement (Ex.PO) and in pursuance thereof got recovered one rifle and 5 live cartridges of 12 bore, which were taken into possession vide recovery memo (Ex.PQ).

Scaled site plan (Ex.PJ) of the place of occurrence was prepared by PW.6 Sukhwinder Singh and thereafter, on completion of usual formalities of investigations, final report under Section 173 Cr.P.C. was prepared and forwarded against accused Manjit and Bachan Singh for their trial.

After commitment of the case, the trial court framed the charges under Sections 302, 307 read with Section 34 IPC against both the accused. Besides, accused Manjit Singh was charged under Section 27 of the Arms Act whereas charge under Section 25 of Arms Act was framed against the accused Bachan Singh.

The prosecution examined ten witnesses in all viz-a-viz PW.1 Dr. Narinder Singh had done post-mortem examination on the dead body of Jagir Singh; PW.2 Gurdial Singh is the author of the first information report; PW.3 Durgo is another eye-witness of the occurrence; PW.4 Ram Lal Head Constable and PW.5 Constable Ravinder Singh are formal witnesses and had tendered their affidavits respectively as Ex.PG and Ex.PH in the evidence; PW.6 Sukhwinder Singh Patwari had prepared the scaled site plan (Ex.PJ) of the place of occurrence; PW.7 Harjinder Singh ASI and PW.8 SI Gurdip Singh are the investigating officers of the present case and PW.9 Constable Bhupinder Singh and PW.10 Constable Major Singh also tendered their affidavits Ex.PY and Ex.PZ in the evidence.

The prosecution give up witnesses Tehal Singh, Prem Singh,

Bagga Singh, Bishan Singh, Gurbachan Singh, Darshan Singh and Sukha Singh having been won over by the accused and tendered in evidence the report of chemical examiner (Ex.PAA), report of Serologist (Ex.PBB) and that of Director, Forensic Science Laboratory (Ex.PCC).

The accused-appellant and Bachan Singh when examined under Section 313 Cr.P.C. pleaded false implication in the case.

In their defence, they examined Naresh Kumar , Asst. Lineman, PSEB-II, Sultanpur Lodhi as DW.1.

After analyzing the evidence adduced by the prosecution, learned trial court vide the impugned judgment dated 12.5.1997 acquitted the accused Bachan Singh and convicted and sentenced the accused-appellant Manjit Singh in the manner indicated above.

We have heard learned counsel for the parties and with their assistance have also gone through the record carefully.

The first argument of learned Senior counsel appearing for the appellant Manjit Singh is qua delay in sending the special report to the Magistrate, which reached at 1:30 p.m. on 19.6.1994 at Kapurthala, to say that the FIR is ante-timed and fatal to the case of the prosecution. The argument does not convince us. It needs to emphasise that it is not as if every delay in sending the special report to the Illaqa Magistrate would necessarily lead to the interference that the FIR has not been lodged at the time stated or has been ante-timed or that the investigation is not fair and forthright. If in a case, it is found that the FIR was recorded without delay and the investigation started on that FIR, then improper and objectionable the delayed receipt of the report by the Magistrate concerned, that cannot by itself justify the conclusion that the investigation was tainted and the prosecution unsupportable. In the instant case, the occurrence had taken place at 12:30 a.m. on the night intervening 18/19-6-1994 in the dead of the night and it cannot be accepted of a witness to rush immediately to the police station to lodge the report, as the element of fear is always there in

the mind of the witnesses who had seen the murder with their own eyes. This exactly has been stated by PW.2 Gurdayal Singh that he did not go to the police station immediately due to the fear of the accused. However, in the early morning his statement Ex.PF was recorded by SI Gurdip Singh (PW.8) at about 8:30 a.m. in the area of village Tibbi, when he was on his way to the police station and then formal FIR was duly recorded at 9:35 a.m. in police station Sultanpur Lodhi, which is at a distance of 14 Kms therefrom. No doubt the special report reached the Magistrate concerned at 1:30 p.m., but it is evident from the statement of PW.5 Const. Ravinder that the special report was duly handed over to him at 10:30 a.m. and he did visit the Illaqa Magistrate but on account of Sunday he was out of station and in this situation he had no choice then to further proceed to Kapurthala where he delivered the special report to ACJM at 1:30 p.m. In this backdrop of the sequence of the events it cannot be said that the delivery of the special report was delayed, to say that it has affected the case of the prosecution, especially under the circumstances when the FIR was recorded without delay and the investigation started on that FIR, as it is evident that PW8 SI Gurdip Singh had reached the spot by 9:00 a.m. and started necessary formalities.

The prosecution case mainly rests on the testimonies of PW.2 Gurdayal Singh and PW.3 Durgo, which have been assailed being closely related to the deceased. No doubt both the witnesses i.e. PW.2 Gurdayal and PW.3 Durgo are the son and widow respectively of the deceased Jagir Singh, but it is not the absolute law that the evidence of relation witness is not entitled to any weight but this very circumstance would add to the value of their evidence because they would be interested in ensuring that the real culprit responsible for the murder be punished and not the innocent person. The occurrence had taken place in the house of the deceased that too in the mid-night and as such, the presence of both the said witnesses at that point of time at the house was quite natural. Their statements are corroborative on material particulars so far the accused-appellant Manjit Singh having fired four shots from his 303 rifle, which they saw through a window, is concerned. They were subjected to cross-examinations but they stood firm to their stand. Learned Senior counsel has contended that both the witnesses

have made an improvement to the effect that they had seen the occurrence in the light of electric bulb, though as per DW.1 Naresh Kumar, Assistant Lineman, PSEB Sultanpur Lodhi, there was no electricity connection on 19.6.1994 in the house of Gurdayal Singh and the same had only been released afterwards on 30.8.1994. The defence cannot derive any benefit from the same for variety of reasons. Firstly, DW.1 Naresh Kumar has deposed only in relation to the domestic power supply and has shown his ignorance about agricultural electricity connection. In other words, there was no specific denial of having power supply in the village. Secondly, a bare perusal of rough site plan Ex.PX, so prepared by SI Gurdip Singh shows the very existence of the electric bulb which was on point 'D' in the site plan which also find mention in the scaled site plan Ex.PJ prepared by PW.6 Sukhwinder Singh Patwari. No sugestion is put to them that the electric bulb was wrongly shown by them in their respective site plans and as such, the very existence of electric bulb suggests that possibility cannot be ruled out that they had a “kundi” connection, which is prevalent in local villages and, thirdly, that the accused-appellant Manjit Singh is also the resident of village Mand Inderpura, to which the witnesses and the deceased belonged and obviously had already known him and as such, there cannot be any chance of mistaken identity

Faced with the situation, it has further been contended by counsel for the appellant that both the witnesses have stated that after causing fire-arm injuries, Jagir Singh was dragged for about a distance of 30 yards towards the sugarcane fields, but PW.1 Dr. Narinder Singh, who conducted the post-mortem examination on the dead body of Jagir Singh did not find any dragging marks on his person. This falsify the presence and version of the prosecution witnesses. In support of his contention learned counsel has relied upon **Gajanan Vs. State of Maharashtra 1997 SCC (Crl.) 605.** The contention is meritless. It cannot be over-looked that the deceased had four gun shot injuries on his person. Statement of PW.1 Dr. Narinder Singh suggests that there were four entry wounds and four exit wounds and in this situation the entire body would be smeared with blood and the possibility that PW.1 Dr. Narinder Singh could not trace any dragging marks on the body of the deceased, cannot be ruled out. Similar

circumstance was before the Hon'ble Supreme Court in case **Kaki Ramesh and others Vs. State of A.P. 1994 SCC (Crl.) 1214** wherein it was held that it is immaterial and the Supreme Court advert in the following words:-

> " 6. As to the absence of abrasion at the back, we do not place much importance inasmuch as even in the FIR the fact of dragging had been clearly mentioned. This apart, the deceased having had as many as 21 wounds on his body, all of whom were incised, the little abrasion might have missed the autopsy surgeon."

Further, the statements of both the eye-witnesses corroborate the medical evidence and for the sake of repetition, as discussed above, both the witnesses have stated that Manjit Singh had fired four shots from his 303 rifle at Jagir Singh and PW.1 Dr. Narinder Singh, during the course of post-mortem examination, also found fire-arm injuries on his person viz-a-viz four entry and four exit wounds. PW.8 SI Gurdip Singh, at the time of inspection of the spot, apart from the recovery of empties of 12 bore, had also recovered six empties (Ex.P78 to Ex.P83) of 303 bore, vide recovery memo Ex.PT. The accused-appellant was arrested on 18.7.1994 by PW.7 ASI Harjinder Singh and by virtue of disclosure statement suffered on 22.7.1994, he got recovered 303 rifle (Ex.P3) along with 75 live cartridges, which were also taken into possession vide recovery memo (Ex.PM), after preparing the sketch of the rifle (Ex.PL). The said six empties so recovered from the spot and the 303 rifle were sent to FSL, Chandigarh for comparison. The report (Ex.PCC) reveals that said six 303 cartridges had been duly fired from 303 rifle, so recovered from the accused appellant Manjit Singh. This also lends corroboration to the commission of crime by the accused-appellant.

It has been contended that the version that four years prior Manjit Singh and his father were arrested in an excise case and they were suspecting Jagir Singh instrumental in it and on that account, they committed the murder of Jagir Singh, is too far fetched motive for the commission of crime. The argument again does not convince us. The variation in human nature being so vast murders are known to have been

actuated by much lesser motive. No doubt the said event had occurred four years back, but how the mind of an assailant reacted is not possible to be fathomed from a detached reflection.

Further, the contention that on the same evidence Bachan Singh, co-accused has been acquitted is again not sustainable because merely a co-accused has been acquitted on the basis of said evidence, the same does not lead, as a natural corollary, that the same benefit be given to the accused-appellant as his case, as discussed above, stand differentiated from the acquitted accused.

The accused-appellant Manjit Singh was the principal accused responsible for causing the death of Jagir Singh. However, there was no substantive charge framed against him under Section 302 IPC. But it was mere an omission. The accused-appellant had a clear notice with reference to the question No.3 recorded during his examination under Section 313 Cr.P.C. that it was he in fact who had caused the death of Jagir Singh. Therefore, the omission to frame a separate charge under Section 302 IPC is only a curable irregularity, which, in the absence of prejudice could not affect the legality of conviction under Section 302 IPC.

Therefore, the conviction of the accused-appellant Manjit Singh stands altered to Section 302 IPC and we uphold the sentences awarded by the trial court. The appeal is accordingly dismissed.

(ARVIND KUMAR)
JUDGE

JANUARY 31,2007 **(MEHTAB S. GILL)**
Jiten **JUDGE**